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Legal aid

Франция

1 What costs are involved in legal proceedings and who normally has to bear them?

The costs incurred in proceedings vary depending on the nature and complexity of the case, the procedure and the court with jurisdiction to decide on the case.

Costs fall into three categories:

- lawyer's fees, which are not subject to a fixed scale and can therefore be agreed between lawyers and clients; in principle these are payable by clients unless they are eligible for legal aid;
- expenses, listed specifically in Article 695 of the Code of Civil Procedure (*Code de procédure civile*) and comprising mainly:
 - a. representation emoluments payable to lawyers or certain public officials (*officiers publics* or *officiers ministériels*); emoluments are separate from fees;
 - b. court costs payable to bailiffs;
 - c. costs of experts' reports and investigation;
 - d. any witness allowances, based on a scale;
 - e. counsel's hearing fee;
 - f. disbursements: costs relating to the fixed-rate expenses advanced by professionals for the requirements of the proceedings.

Costs are payable by the losing party. That principle is laid down in Article 696 of the Code of Civil Procedure. However, judges may give a reasoned decision ordering another party to pay all or part; in the latter case they divide the costs.

- other costs incurred in court by the parties to the proceedings are in principle payable by those parties unless the judge decides otherwise. The judge may exercise that power in both criminal and civil cases, with due regard to equity or the economic situation of the convicted party. Judges may even rule of their own motion that such an order is not necessary.

In criminal cases, the state pays the court fees. The convicted person is required to pay a fixed fee for the proceedings, the amount of which depends on the offence.

2 What exactly is legal aid?

The legal aid system (which has replaced the legal assistance system organised under the law of 1972) is provided for by Law No 91-647 of 10 July 1991 on legal aid (*loi no 91-627 du 10 juillet 1991 relative à l'aide juridique*), supplemented by Decree No 91-1266 of 19 December 1991. It covers:

- legal aid: full or partial financial aid granted by the state for proceedings in trial or appeal courts, enforcement of decisions and settlements before the commencement of proceedings;
- aid for assistance by a lawyer in criminal proceedings which might be alternatives to prosecution (settlement, mediation), and assistance by a lawyer when in police custody and before a prison disciplinary board;
- and access to the law (information, advice, free legal consultation).

Legal aid allows the recipient to receive free assistance from a lawyer or other legal official (e.g. bailiff, solicitor, auctioneer) and to be exempted from all or part of the court costs.

3 Do I have a right to legal aid?

Legal aid is granted by the legal aid office (*bureau de l'aide juridictionnelle*) set up at Regional Courts (*Tribunal de grande instance*), replaced by Combined (Regional and District) Courts (*Tribunal judiciaire*) from 1 January 2020, subject to several financial, nationality, residence and admissibility criteria.

• Financial criteria

You are eligible for legal aid if the average of all assets you received in the previous calendar year (not including family allowances and certain social security benefits) does not exceed a certain threshold established annually by law.

For instance, legal aid applications lodged in 2019 are considered in the light of the assets received in 2018. For a single person, the ceiling for monthly assets from 1 January 2019 must be less than €1,032 for full legal aid and less than €1,547 for partial legal aid. In both cases an additional €186 is applied for the first two dependants and €117 for three dependants or more, thus raising the asset threshold.

Anyone whose assets exceed those thresholds may be granted legal aid as an exceptional case if their action appears particularly deserving in view of the subject of the dispute or the foreseeable cost of the proceedings (Article 6 of the Law of 1991).

Persons receiving benefits from the National Solidarity Fund (*Fonds National de Solidarité*) or Active Solidarity Income (*Revenu de Solidarité Active*) or wishing to assert rights to military invalidity pensions and victims of war are not required to declare their assets.

Aid applicants who are victims of the most serious crimes (attacks with intent to endanger life or cause bodily harm) and their beneficiaries are also exempt from declaring their assets.

• Nationality criterion

You are eligible for legal aid if you are a French national or a national of one of the EU Member States (with the exception of Denmark) or a foreign national habitually and legally resident in France.

You can also be granted legal aid for a case in a French court if you are a foreigner not resident in France but are a national of a state having an international or bilateral agreement with France making its nationals eligible for legal aid.

• Residence criterion

Apart from the cases mentioned above, habitual and legal residence in France is the general rule.

However, it is not mandatory in exceptional cases if the applicant's situation appears particularly deserving in view of the subject of the dispute or the foreseeable cost of the proceedings.

Foreigners are also granted legal aid without a residence condition when they are minors, assisted witnesses, persons under investigation, charged, accused or convicted or parties claiming damages in criminal proceedings, or when they are the subject of proceedings concerning entry and residence in France.

• Admissibility criterion

Legal aid is granted to persons whose actions do not appear manifestly inadmissible or unfounded. This condition is not applicable to defendants in the action, persons with civil liability, assisted witnesses or persons charged, accused or convicted.

Claimants are refused legal aid for appeals if no reasonable ground of appeal can be established.

When legal aid has been refused on that basis and the judge nevertheless allows the action brought by the claimant, the claimant is granted a refund of the costs, expenses and fees they have incurred or paid, up to the amount of the legal aid to which they would have been entitled in view of their assets.

4 Is legal aid granted for all types of proceedings?

Legal aid is granted to claimants and defendants in non-contentious or contentious proceedings in any court and for the hearing of minors.

It may be granted for all or part of the proceedings and for the purpose of reaching a settlement before the commencement of proceedings.

Legal aid may also be granted to secure enforcement of a court decision or any other writ of execution, including those from other EU Member States, with the exception of Denmark.

5 Are there special procedures in cases of need?

Legal aid may be granted provisionally when the proceedings jeopardise the essential living conditions of the person concerned, particularly in the case of enforcement involving seizure of property or eviction. In such cases it may be granted by the head of the legal aid office or by the competent court or its president.

In criminal cases, the procedure allows for legal aid to be granted in urgent circumstances (for instance police custody, examination at first appearance, immediate trial). It is granted during the proceedings and covers all acts by the court.

6 Where can I obtain a legal aid application form?

Legal aid application forms are obtainable from the Regional Court (*Tribunal de grande instance*), the District Court (*Tribunal d'instance*) (both replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020) for your place of residence or the place where the case is to be heard.

The application form can also be downloaded by clicking on the access to the form (*'accéder au formulaire'*) link.

If you are a French national living abroad, the form is also obtainable from consulates or at the:

Bureau du droit de l'Union, du droit international privé et de l'entraide civile, direction des affaires civiles et du sceau, Ministère de la Justice, 13 place Vendôme, 75042 Paris Cedex 01.

If you are a foreigner not resident in France, you can obtain the legal aid form from the central authority designated by your country to transmit international legal aid applications. Most countries have designated their Ministry of Justice. France has designated the above department at the Ministry of Justice, the *Bureau du droit de l'Union, du droit international privé et de l'entraide civile*, to process applications in civil, commercial or administrative cases by residents of Member States of the Council of Europe which are party to the European Agreement of 27 January 1977 on the Transmission of Applications for Legal Aid with responsibility for receiving and transmitting applications.

If you are a national of an EU Member State, with the exception of Denmark, and you are resident in France or your case is being heard in a French court, you might be eligible for cross-border legal aid in civil and commercial cases in accordance with Council Directive 2003/8/EC of 27 January 2003. The office responsible for processing those applications in France is the:

Bureau de l'aide juridictionnelle, Service de l'accès au droit et à la justice et de l'aide aux victimes, Ministère de la Justice, 13, place Vendôme, 75042 PARIS Cedex 01.

7 Which documents need to be submitted with the legal aid application form?

The legal aid application form must be completed and accompanied by the supporting documents specified in the form, relating particularly to financial resources (your own and those of the persons habitually living with you), the subject of your application and the court dealing with the case.

8 Where do I submit my application for legal aid?

You can submit your application to the legal aid office for your place of residence or the office for the district in which the court hearing the case is located.

There is a single legal aid office in every Regional Court (replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020), which processes legal aid applications for cases to be heard in that court or those within its district: Combined Court, Administrative Court (*Tribunal administratif*), Employment Tribunal (*Conseil de prud'hommes*), Court of Appeal (*Cour d'appel*) and Administrative Court of Appeal (*Cour administrative d'appel*).

As an exception to the single office rule, each of the following courts also has an office:

- the Court of Cassation (*Cour de cassation*);
- the Council of State (*Conseil d'état*), the highest administrative court;
- the National Right of Asylum Court (*Cour nationale du droit d'asile*).

9 How do I find out whether I am entitled to legal aid?

You will be notified of the decision by the legal aid office at your place of residence.

10 What should I do, if I am entitled to legal aid?

You should contact your lawyer (or legal official, e.g. bailiff, expert, solicitor) or the person designated for you in order to explain your case and give them all the information and documents required for their work.

If you have been awarded partial legal aid, you must agree with them the additional fee you will pay them. That amount must be shown in the agreement you will have to sign.

11 Who chooses my lawyer, if I am entitled to legal aid?

All individuals may appoint a lawyer of their choice.

If you are appointing your own lawyer, you must then give their name on the legal aid application.

However, if you do not know of a lawyer, one will be appointed for you by the chair of the bar at the Regional Court (Combined Court).

12 Does legal aid cover all the costs of the proceedings?

If you are granted full legal aid, that covers all court costs, including the direct payment to the lawyer or other legal officials (bailiffs, experts, solicitors, etc.).

That payment is calculated according to a scale or rate depending on the type of proceedings.

13 Who bears the other costs, if I am entitled only to limited legal aid?

Depending on your assets, you can be granted partial legal aid at two rates, 55% and 25%, payable by the state. You are still liable for an additional non-fixed fee, determined by agreement between you and the lawyer, under the supervision of the chair of the bar to whom you may refer any dispute.

As with full legal aid, eligibility for partial legal aid exempts the recipient from all other necessary court costs.

14 Does legal aid also cover appeals?

• If you are a defendant and you are granted legal aid, it is awarded automatically for any appeal brought by your opponent, provided that your assets have remained the same or that they do not exceed the threshold.

You must nevertheless expressly complete a further application to the legal aid office of the Regional Court (Combined Court) in the district in which the Court of Appeal is sitting. That court must ensure that your assets still fall below the limit.

- If you are a claimant you must lodge a further application as above. However, your eligibility for legal aid will depend on two conditions: as well as the amount of your assets, the admissibility of your action will also be considered.
- If you have already been granted legal aid for previous proceedings and you wish to apply for a review, the previous decisions on eligibility no longer apply. You must lodge an application with the legal aid office at the Court of Cassation, which will consider the admissibility of the proposed action as well as the amount of your assets.

In appeals, claimants are refused legal aid if no reasonable ground of appeal can be established.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)

The right to legal aid may be withdrawn completely or in part (Article 50 of the Law of 1991) during or after the proceedings in the following circumstances:

- if the aid was obtained on the basis of incorrect declarations or documents;
- if, during the proceedings, you come into possession of assets such that, if they had existed at the time the legal aid application was made, it would not have been granted;
- when the final decision procured assets for you such that, if they had existed at the time the legal aid application was made, it would not have been granted;
- when the proceedings for which you have used the legal aid have been found dilatory or an abuse of process.

16 Can I contest a refusal to give legal aid?

You may appeal against the decision if you are refused legal aid.

The appeal is to be brought:

- by applying to the legal aid office for a review of your application if the reason for the refusal concerns the amount of your assets;
- for other grounds for refusal, by lodging an appeal against the refusal decision with the president of the Regional Court (replaced by the Combined Court (*Tribunal judiciaire*) from 1 January 2020) to which the legal aid office that took the decision is attached. In this second instance, the new decision is not open to appeal.

Legal aid may be granted retrospectively if a party has brought an action and won the case when aid was refused on the ground that the action did not have a reasonable chance of succeeding.

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